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6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**

8 JEREMY STROHMEYER, )

3:14-cv-00661-RCJ-WGC

9 Plaintiff, )

**ORDER**

10 vs. )

Re: ECF No. 107

11 K. BELANGER, *et al.*, )

12 Defendants. )  
13

14 Before the court is Plaintiff's Motion for Leave to Serve Defendants Donna Jenkins ("aka Lisa  
15 Armstead"), James Keener, Keith Miranda and Michael Bobadilla<sup>1</sup> by Publication. (ECF No. 107.) The  
16 Defendants who have appeared herein have opposed (ECF No. 115). No reply memorandum (which  
17 would have been due February 21, 2019, under LR 7-2(b)) has been received.

18 **BACKGROUND**

19 The Office of the Attorney General did not accept service on behalf of the subject Defendants  
20 (ECF No. 57), who were named as Defendants in Plaintiff's Second Amended Complaint and against  
21 whom certain causes of action were allowed to proceed under the court's screening order. (ECF No. 44.)  
22 Last known addresses for the subject Defendants were submitted under seal. (ECF No. 58.) The  
23 U.S. Marshal attempted service as to each of the subject Defendants but was unsuccessful. (Miranda,  
24 ECF No. 65; Jenkins, ECF No. 67; Keener, ECF No. 76; Bobadilla, ECF No. 77.) Because the subject  
25 Defendants could not be personally served, Plaintiff now seeks to effect alternative service by  
26 publication.  
27

28 <sup>1</sup> Referred to herein as the "subject Defendants."

## DISCUSSION

Service by publication in a federal action is governed by Fed. R. Civ. P. 4(e)(1), which allows alternative service by following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located, i.e., Nevada. Rules 4(e)(1)(i) and (iii) of the Nevada Rules of Civil Procedure govern the conditions under which service of a summons by publication is permitted. The Nevada Rule reads in pertinent part as follows:

**(I) General.** In addition to methods of personal service, when the person on whom service is to be made resides out of the state, or has departed from the state, or cannot, after due diligence, be found within the state, or by concealment seeks to avoid the service of summons, and the fact shall appear, by affidavit, to the satisfaction of the court or judge thereof, and it shall appear, either by affidavit or by a verified complaint on file, that a cause of action exists against the defendant in respect to whom the service is to be made, and that the defendant is a necessary or proper party to the action, such court or judge may grant an order that the service be made by the publication of summons.

Provided, when said affidavit is based on the fact that the party on whom service is to be made resides out of the state, and the present address of the party is unknown, it shall be a sufficient showing of such fact if the affiant shall state generally in such affidavit that at a previous time such person resided out of this state in a certain place (naming the place and stating the latest date known to affiant when such party so resided there); that such place is the last place in which such party resided to the knowledge of affiant; that such party no longer resides at such place; that affiant does not know the present place of residence of such party or where such party can be found; and that affiant does not know and has never been informed and has no reason to believe that such party now resides in this state; and, in such case, it shall be presumed that such party still resides and remains out of the state, and such affidavit shall be deemed to be a sufficient showing of due diligence to find the defendant. This rule shall apply to all manner of civil actions, including those for divorce.

\* \* \*

**(iii) Publication.** The order shall direct the publication to be made in a newspaper, published in the State of Nevada, to be designated by the court or judge thereof, for a period of 4 weeks, and at least once a week during said time. In addition to in-state publication, where the present residence of the defendant is unknown the order may also direct that publication be made in a newspaper published outside the State of Nevada whenever the court is of the opinion that such publication is necessary to give notice that is reasonably calculated to give a defendant actual notice of the proceedings. In case of publication, where the residence of a nonresident or absent defendant is known, the court or judge shall also direct a copy of the summons and complaint to be deposited in the post office, directed to the person to be served at the

1 person's place of residence. The service of summons shall be deemed  
2 complete in cases of publication at the expiration of 4 weeks from the  
3 first publication, and in cases when a deposit of a copy of the summons  
and complaint in the post office is also required, at the expiration of 4  
weeks from such deposit.

4 Service by publication requires a two step analysis. The first is whether Plaintiff exercised due  
5 diligence in attempting to effect personal service. NRCP 4(e)(1)(i). The second step in the court's  
6 analysis is whether the proposed newspaper wherein the notice is to be published is reasonably  
7 calculated to provide notice to the non-appearing Defendant, both in state (Nevada) and out of state (in  
8 this instance, Idaho and California).

9 **A. Diligence**

10 The record reflects the U.S. Marshal unsuccessfully attempted service on the subject Defendants  
11 at the last known addresses the Office of the Attorney General provided for Defendants  
12 Jenkins/Armstead (ECF No. 67), Miranda (ECF No. 65), and Keener (ECF No. 67). The U.S. Marshal  
13 was similarly unsuccessful in serving Bobadilla at three (3) Southern California addresses (all in  
14 Norwalk, CA) which Plaintiff provided the U.S. Marshal in his USM-285 form (ECF No. 77).

15 Therefore, the court finds Plaintiff, an inmate confined at High Desert State Prison, has exercised  
16 sufficient due diligence in attempting to effect personal service on the subject Defendants. *See,*  
17 *Abrew v. Gilmer*, 985 P.2d 746 (Nev. 1999).

18 **B. Whether publication is reasonably calculated to give a defendant actual notice of the**  
19 **proceedings**

20 Plaintiff proposes publication in "Nevada Legal News." Plaintiff attaches as Exhibit A to his  
21 motion (ECF No. 107 at 14) a letter from Nevada Legal News characterizing itself as a "newspaper" and  
22 that Nevada Legal news would be willing to publish, if accompanied by a court order and a "Pro Bono  
23 Waiver," a summons and the complaint.

24 Defendants object to the use of the "Nevada Legal News" as being a "subscription-only  
25 publication" (ECF No. 115 at 3), a characterization unrebutted by the Plaintiff. The court visited the  
26 website for Nevada Legal News (<https://nevadalegalnews.com>) and it appears that the "newspaper" is  
27 indeed available only by subscription (*see*, excerpt of website, Exhibit A, pp. 1 & 2 hereto). While the  
28 website characterizes the publication as a "newspaper of general circulation" (*see* Exhibit B), a link on

1 the company's website entitled "Click here for a Sample Edition" displays an edition for Tuesday, May  
2 30, 2017, which below the newspaper's banner reads "*Clark County's* Daily Business/Legal Newspaper"  
3 (Exhibit C, emphasis added).

4 Therefore, the court is skeptical whether a subscription-only "newspaper" seemingly published  
5 primarily solely in Clark County (Southern Nevada) satisfies the requirements of NRCP 4(e)(1)(iii) for  
6 a newspaper of general circulation.

7 The court also shares the Defendants' skepticism whether Nevada Legal News is reasonably  
8 calculated to give the Defendants "actual notice of the proceedings" since the last known addresses for  
9 Defendants Keener and Miranda are Fallon and Sparks, Nevada, respectively. (ECF No. 107 at 11 and  
10 12.) The court finds an online publication which is self-characterized as being a Clark County  
11 publication is not intended to give adequate notice to two Northern Nevada residents, at least according  
12 to their last known addresses.

13 NRCP 4(e)(1)(iii) also enables a court to reject service by publication in-state where it appears  
14 to the court the Defendant intended to be served resides out of state. Donna Jenkins (aks Lisa  
15 Armstead), according to Plaintiff, resides in Idaho. (ECF No. 107 at 3.) With regard to Defendant  
16 Bobadilla, Plaintiff provided three (3) potential addresses to the U.S. Marshal when he was seeking  
17 service by the Marshal and each of the addresses were in Norwalk, a community the court believes to  
18 be in Southern California. To whatever extent "Nevada Legal News" is a Nevada publication, its  
19 circulation (Southern Nevada) appears to be such that publishing a summons and complaint in that  
20 newspaper would not be reasonably calculated to provide ostensible Southern California and Idaho  
21 Defendants notice of these proceedings.

## 22 CONCLUSION

23 The court concludes that publication in Nevada Legal News would not be "reasonably  
24 calculated" to give the Defendants "actual notice of the proceedings." Plaintiff's Motion for Publication  
25 (ECF No. 107) is therefore **DENIED** without prejudice. If Plaintiff subsequently is able to identify  
26 general jurisdiction publications in each of the Defendants' last known locales, the court would  
27 reconsider Plaintiff's request for service by publication.

1 Plaintiff is further advised his *in forma pauperis* status would not allow the costs of service by  
2 publication to be an expense the court would cover.<sup>2</sup>

3 **IT IS SO ORDERED.**

4 DATED: February 27, 2019.

6 

7 WILLIAM G. COBB  
8 UNITED STATES MAGISTRATE JUDGE

22 \_\_\_\_\_  
23 <sup>2</sup> Shortly after completion of this Order, the court received Plaintiff's "Motion to Strike Defendants'  
24 Response to Plaintiff's Motion for Leave to Serve by Publication" (ECF No. 123). The proper procedure to rebut  
25 a party's opposition to another party's motion is to file a reply memorandum, not a motion to strike. LR 7-2(b).  
26 A motion to strike only pertains to "pleadings." [Fed. R. Civ. P. 12(f).] A memorandum of points and authorities  
27 in response to a motion is not a "pleading." Fed. R. Civ. P. 7(a). To the extent ECF No. 123 is considered a  
28 motion, the motion is **DENIED**.

26 Alternatively, to the extent Plaintiff's motion to strike is considered to be a reply memorandum to  
27 Defendants' opposition, the court finds no substantive argument therein which would alter the court's conclusion  
28 that "Nevada Legal News" is not an appropriate newspaper to utilize to effect service of publication. The court's  
conclusion that Plaintiff's motion for service by publication remains intact.

## **EXHIBIT A**



## Nevada Legal News Online

Nevada Legal News publishes various public records, public legal notices and general news stories on a daily basis. Some of the records compiled are:

- Bankruptcies / Discharges
- Fictitious Firm Names
- Marriage Certificates
- Real Estate Transfers / New Home Loans
- County & City Business Licenses
- Civil Actions
- Divorce Actions
- Probates
- Trustee Sale Calendar

## Online Subscription

To receive the fastest, most up-to-date information you can subscribe to Nevada Legal News online. If you would like to receive an online subscription, click on the 'Subscribe Now' button below.



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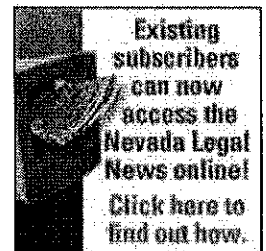


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## **EXHIBIT B**

[Company History](#)[Management Team](#)

## Company

Nevada Legal News has been publishing public records since 1960. It is a newspaper of general circulation and has been specializing in public legal notices for more than 50 years.

Additional services provided by Nevada Legal News include the publication of the Nevada Legal Directory, published three times a year, the manufacturing of corporate kit books, self-inking stamps, and notary stamps.

Our company takes pride in serving the public and strives to provide fast and efficient service to meet all of your needs.

The newspaper is the primary publication source for attorneys and pro per individuals to publish their legal ads at a very affordable price.



Nevada Legal  
Directory

## **EXHIBIT C**

# NEVADA Legal NEWS

A DAILY NEWSPAPER ESTABLISHED 1960

www.nevadalegalnews.com

Clark County's Daily Business/Legal Newspaper Volume 57 Issue 103 Tuesday, May 30, 2017 \$1.00

## Dollar firms after GDP data, sterling shaken by polls

By Saqib Iqbal Ahmed

NEW YORK, May 26 (Reuters) - The dollar rose on Friday after upbeat U.S. gross domestic product data, while sterling suffered its worst fall since mid-January after a poll showed a narrowing lead for the ruling Conservatives before elections next month. The dollar index, which tracks the greenback against six major rivals, was up 0.18 percent to 97.423, after rising to a one-week high of 97.548, earlier in the session. The U.S. economy slowed less than initially thought in the first quarter. Gross domestic product increased at a 1.2 percent annual rate instead of the 0.7 percent pace reported last month, the Commerce Department said on Friday. "The GDP figure was a pleasant surprise. I don't think markets were looking for a revision this big," said Sreen Haraji, FX strategist at Mizuho in New York.

"It confirms or at least gives some relief to the idea that the weakness that we had seen in economic performance is likely to be transitory."

The greenback weakened earlier this week after minutes of the Federal Reserve's most recent meeting showed policymakers agreed they should hold off on raising interest rates until it was clear a recent U.S. economic slowdown was temporary. The dollar was down 0.55 percent against the yen to 111.2 yen after paring earlier losses and the euro slipped to a 1-week low of 1.1161 against the greenback.

Trading was very light ahead of a holiday weekend.

"It's hard to make anything out of yesterday's and today's price action. We have to wait till markets get to full liquidity next Tuesday," said Win Thin, global head of emerging markets currency strategy at Brown Brothers Harriman in New York. Sterling dived about one percent against the dollar to a 1-month low of \$1.2776 after a YouGov poll published on Thursday showed British Prime Minister Theresa May's lead narrowing to just 5 percentage points over the Labour opposition less than two weeks before a general election.

The assumption that a landslide election win for May would strengthen her hand over hardline Brexiters in her ruling party and allow her to negotiate a smoother departure from the European Union, has given sterling a near 4 percent bump since she announced the election.

## Oil prices rebound, sterling hit as May's lead shrinks

By Hilary Russ

NEW YORK, May 26 (Reuters) - Oil prices recovered on Friday from some of the previous day's steep slide after investor disappointment that OPEC curbs did not go far enough, while Wall Street pulled back after six days of straight gains.

U.S. bond yields also stayed steady and gold saw big gains as a risk-off sentiment and concerns about political uncertainty took hold, with spot gold rising as far as \$1,269.11, its highest levels since May 1.

"We have had the political noise coming from Trump and the U.S. administration and there is a certain element of uncertainty in the markets in general, which is supporting gold. Equities are also down," analyst Carsten Menke at Julius Baer in Zurich said.

Friday's partial rebound for oil prices followed a day of downward pressure. Some market participants had priced in more aggressive, extended output cuts from the Organization of the Petroleum Exporting Countries.

U.S. crude rose 1.74 percent to \$49.75 per barrel and Brent was last at \$52.14, up 1.32 percent on the day. Sterling slid more than 1 percent following a poll showing the ruling Conservatives' lead shrinking two weeks before an election.

Britain's pound tumbled to a more than four-week low of \$1.2772. It was last down 1.03 percent at \$1.2806.

The dollar index rose 0.18 percent, with the euro down 0.3 percent to \$1.1175.

Wall Street saw another strong day for consumer stocks, offset by weakness in healthcare and real estate shares. The flattening market threatened to break a winning streak, which included record high closes for the S&P 500 and the Nasdaq on Thursday.

The U.S. economy slowed less than initially thought in the first quarter as gross domestic product increased at a 1.2 percent annual rate. The Dow Jones Industrial Average fell 2.1 points, or 0.01 percent, to 21,080.85, the S&P 500 gained 0.18 points, or 0.01 percent, to 2,415.25 and the Nasdaq Composite added 1.95 points, or 0.03 percent, to 6,207.20.

In Britain, the first opinion poll since a suicide bombing killed 22 people indicated the opposition Labour Party had cut the Conservative Party's lead to five points, with less than a fortnight to go to the parliamentary election. Prime Minister Theresa May has said a big win would strengthen her hand in Brexit negotiations.

"With this kind of momentum and almost two weeks to go until the vote, not only is this not going to be the breeze that May anticipated when she called the snap election last month, it could yet turn into a humiliating defeat for the Conservative leader and her party," said Craig Erlam, senior market analyst at OANDA.

## Switch it up this year: Buy in May, till November stay

By Sinead Carew

NEW YORK, May 26 (Reuters) - "Sell in May and go away" is perhaps the oldest saw on Wall Street, but it appears there's no shortage of U.S. mutual funds doing exactly that this year.

After all, the S&P 500 has delivered a total return, including reinvested dividends, of 10.8 percent over the last six months, essentially capturing all of the average rolling 12-month total return on the index since 1990, so why not cash in?

Indeed, political drama and high valuations are clearly driving some investors to take profits. American fund investors have yanked more than \$17 billion from U.S. stocks so far this month, data from fund tracker Lipper shows, with some \$10.1 billion in withdrawals in the latest week alone, the second biggest outflow for the year.

Some hearty investors, however, stand ready to bet against that flow - and history - and are advocating a buy-in-May approach this year.

"If anything you might want to buy in May and sell in November," said Chris Zaccarelli, Chief Investment Officer at Cornerstone Financial Partners, in Huntersville, North Carolina, who bases his bullishness on the healthy outlook for the global economy rather than expectations for a policy boost from the Trump administration.

While stocks appear to have picked in hope for a Trump stimulus this year,

Zaccarelli says his expectations for progress on Trump's agenda in 2017 has recently tumbled to 40/60 from 80/20 because he doesn't see Trump gaining enough support from a severely divided Republican party, which suggests to him that selling will be more opportune a few months down the road.

"If we go the entire year and Washington does nothing, no tax reform, no repatriation, I think there will be a little disappointment," he said. "Ironically enough, the disappointment will be in November or December because people will realize they went the whole year and got nothing done."

The sell-in-May tactic has been kicked around Wall Street for decades and is premised on the historic outperformance of the November-May period over the other six months of the year. It works.

In the last 20 years, a \$100 investment in the S&P from November through April would have become \$343 while a \$100 investment in May through October in the same years would have slipped to \$98.5, according to Bespoke Investment Group, in Harrison, New York. From 1928 to 2017 the \$100 would have become \$4,270 from November through April but would only be worth \$257 from investing from May through October, according to Bespoke.

In the summer months "things slow down so you tend to see the chances for a pickup in volatility."

## Under state pressure, Venezuela TV limits live coverage of protests

By Deisy Buitrago and Corina Pons

CARACAS, May 26 (Reuters) - In the mountains above Caracas, two government officials often stand watch over the antennas of TV news network Globovision, poised to take it off air if regulators object to coverage of anti-government protests, according to two station employees.

They said the 24-hour Venezuelan news station receives regular warnings from state telecom regulator Conatel against showing live footage of clashes between anti-government protesters and security forces, or broadcasting terms such as "dictatorship" and "repression."

"It's a daily threat," said one of the employees, citing information from station managers and asking not to be identified for fear of reprisals.

"Conatel is making decisions about coverage." In contrast to past waves of unrest in Venezuela, particularly during Hugo Chavez's 1999-2013 rule, the nation's three main private television stations have provided minimal live coverage of the latest anti-government demonstrations.

They rarely show more than a few minutes of real-time images of protests, which range from peaceful marches to violent melees that have left 57 people dead amid anger against President Nicolas Maduro and frustration over the crumbling economy. However, the private networks, including Globovision, do give broadly equal weight to opposition and government leaders and supporters in broadcasts - contrary to assertions by critics that they muzzle the opposition.

"If people abroad sampled Venezuela's TV media directly, as opposed to judging it by what is said about it by the international media and some big NGOs, they'd be shocked to find the opposition constantly denouncing the government and even making very thinly veiled appeals to the military to oust Maduro," said Joe Emersberger, a Canadian blogger who tracks Venezuelan media and writes for state-funded Telesur network.

"Focusing on 'live' coverage is just a way to avoid acknowledging they (protests) are being extensively covered."

Regulators do openly describe vigilance of coverage, with Conatel director Andres Mendez recently telling state TV the regulator was constantly evaluating Globovision and some of its anchors. "We sometimes have pleasant conversations with (Globovision's) president," he said.

Globovision, Mendez, Conatel, and the Information Ministry did not respond to requests for comment. Ruling Socialist Party officials scoff at the idea of any censorship, insisting the government is the victim of a U.S.-supported campaign by private local and international media to depict it as a repressive regime and thus justify a coup.

They recall that private media openly backed a bungled 2002 coup against Chavez, and accuse media of exaggerating the protests to weaken Maduro's government.

Unable to follow the protests live on TV, many Venezuelans have turned to other sources of information, especially online.

"I find out what's going on from my phone and social media," said Claudia Mejias, who watches Colombian network Caracol via cable at the hair salon where she works and then shares information with friends via Whatsapp and Facebook.

Though social media platforms have to some extent supplanted TV news, they frequently transmit inaccurate information. And only 53 percent of Venezuelans have internet access, according to one local research firm.

Mendez of Conatel said authorities are in the process of acquiring technology that will regulate electronic media better.

Created during the Chavez era, Conatel's brief is to guard against the promotion of violence and inappropriate content for children. But opposition critics say it has instead become a politically-motivated censor. Globovision, which for years offered wall-to-wall live coverage openly in favor of the opposition, sharply tempered its line and cut back live coverage after a 2013 ownership change.

It was, though, subject to a Conatel investigation after an opposition lawmaker in a January interview said the country had become a dictatorship and called for civil disobedience. Mendez said Globovision was being chided for transmitting messages that "urged the disavowal of the rule of law."

The two Globovision employees said its producers were under instruction that opposition protests should not be broadcast live for more than a minute, and to follow that with footage of a government minister. Evening news broadcasts by the country's other major private television networks - Venevision and Televen - usually include footage of the day's protests.

But it is generally edited to avoid showing the handwritten signs calling Maduro a dictator or people chanting slogans against him, both of which are ubiquitous at rallies.

Employees from two of the major networks, all of whom also asked not to be identified, said they have also been instructed to carefully manage reporting and interviews so as to avoid state sanctions.

The stations did not respond to emails seeking comment.

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### PUBLIC LEGAL NOTICES